



Federal Communications Commission  
Washington, D.C. 20554

January 4, 2022

*In Reply Refer to:*  
1800B3-AR

Clear the Airwaves Project  
c/o Leila Wills et al.  
1507 East 53rd Street, Suite 485  
Chicago, IL 60615

AMFM Broadcasting Licenses, LLC  
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In re: **AMFM Broadcasting Licenses, LLC**  
WGCI(FM), Chicago, Illinois  
Facility ID No. 51165  
Application File No. 0000118922

**Informal Objection**

Dear Parties:

We have before us the application (Application)<sup>1</sup> of AMFM Broadcasting Licenses, LLC, (AMFM) for renewal of its license for station WGCI(FM), Chicago, Illinois (WGCI). Also before us is a pleading filed by Clear the Airwaves Project (CTAP) against the Application, which we will treat as an informal objection (Objection).<sup>2</sup> As discussed below, we deny the Objection and grant the Application.

**Background.** AMFM timely filed the Application on July 29, 2020. On August 11, 2020, CTAP filed the Objection. AMFM filed a Response to Informal Objection on August 26, 2020 (Opposition).<sup>3</sup> CTAP filed a reply to the Opposition on September 16, 2020 (Reply).<sup>4</sup>

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<sup>1</sup> Application File No. 0000118922 (filed Jul. 29, 2020).

<sup>2</sup> Objection, Pleading File No. 0000120299 (filed Aug 11, 2020). CTAP's pleading also petitions for reconsideration of the Media Bureau's (Bureau) grant of the renewal application for station WPWX(FM), Hammond, Indiana, Pleading File No. 0000120300 (filed Aug 11, 2020). The Bureau issued a separate decision on the pleading as applied to station WPWX(FM)'s license renewal application. *See Dontron Inc., WPWX(FM), Hammond, Indiana*, Letter Order, Application File No. 0000108172 (MB Jun. 30, 2021).

<sup>3</sup> Opposition, Pleading File No. 0000120788 (filed Aug. 26, 2020).

<sup>4</sup> Reply, E-mail from Leila Wills, Clear the Airwaves Project, to Tom Hutton, Esq., Deputy Division Chief, Audio Division, FCC Media Bureau (Sept. 16, 2021, 6:35 EDT); Pleading File No. 0000136787 (filed Sept. 16, 2020).

In the Objection, CTAP argues that the Application should be denied and the license revoked because: 1) WGCI is operating in “continued violation of the FCC Standards of Decency;”<sup>5</sup> and 2) airs obscene, vulgar, and violent content that promotes shootings, gang violence, and drug use, and includes sexually graphic lyrics.<sup>6</sup> Although CTAP included brief, excerpted quotations of lyrics from songs that it claimed WGCI, WPWX and “other similarly-formatted stations across the country”<sup>7</sup> aired, the Objection did not specify any dates or times of broadcasts, did not provide any recordings of broadcasts, and did not specify whether its quotations were lyrics from songs as aired by WGCI or were lyrics of the versions of these songs not intended for broadcast by radio stations.<sup>8</sup>

In the Opposition, AMFM maintains that CTAP fails to demonstrate that WGCI’s programming contravenes the public interest, convenience, and necessity because it lacks specificity and factual evidence.<sup>9</sup> Specifically, AMFM counters that: 1) the Commission does not construe the public interest standard to allow for censorship;<sup>10</sup> 2) the Commission does not regulate violent content or drug use;<sup>11</sup> 3) the sexual nature of the lyrics do not rise to the level of profanity or indecency, nor do they prevent grant of license renewal;<sup>12</sup> and 4) if songs have explicit lyrics, WGCI broadcasts an obstructed or altered version.<sup>13</sup>

In its Reply, CTAP provides lyric samples from songs allegedly played on WGCI between August 15, 2020 and August 21, 2020<sup>14</sup> and references audio recording submissions.<sup>15</sup> CTAP also alleges

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<sup>5</sup> Objection at 1.

<sup>6</sup> *Id.* at 2-3.

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.* CTAP’s Objection edited some words, without any indication of whether those edits were its own or were edits in songs as aired. The Objection also did not attempt to distinguish between broadcasts by WGCI, WPWX or “similarly-formatted stations” that are not the subject of the Objection, claiming that its quotations were “just a sample of lyrics being played on these stations 24 hours a day, seven days a week.” *Id.* at 2.

<sup>9</sup> Opposition at 2-3.

<sup>10</sup> *Id.* at 3-4.

<sup>11</sup> *Id.* at 4-5.

<sup>12</sup> *Id.* at 5-6.

<sup>13</sup> *Id.*

<sup>14</sup> Reply at 2-6. CTAP maintains that these lyrics are violent, drug-related, and sexually explicit, but does not provide any clarity about whether its quoted lyrics were broadcast or were lyrics not intended for broadcast, or dates and times the songs were broadcast. *Id.* In addition, the Commission’s rules (Rules) limit replies to matters raised in the opposition. See 47 CFR § 1.45(c). Many of the lyrics cited in the Reply involve songs that were not addressed in the Objection or in the Opposition. Those portions of the Reply will be dismissed pursuant to 47 CFR § 1.45(c) because they involve factual matters raised for the first time in the reply pleading.

<sup>15</sup> Reply at 7. Describing the recordings, CTAP states that “WGCI removes the vowel from the word,” which indicates that the audio submissions were edited prior to broadcast, and therefore were not aired without edits, as CTAP claims. We will strike from the record and decline to consider these recordings, because this material was not addressed in the Objection or in the Opposition, but rather was raised for the first time in the Reply. 47 CFR § 1.45(c).

that AMFM is censoring content based on the race of listeners,<sup>16</sup> it has a history of playing violent music,<sup>17</sup> and parents are unable to block their children from hearing WGCI content.<sup>18</sup>

**Discussion.** The Objection does not claim to be, nor does it satisfy the criteria for a petition to deny a license renewal application.<sup>19</sup> Specifically, CTAP failed to provide an affidavit supporting its factual claims and demonstrating that at least one of its members was either a resident of WGCI's service area or a regular listener of the station.<sup>20</sup> Accordingly, CTAP is not a party-in-interest and its pleading will be treated as an informal objection.<sup>21</sup>

Informal objections to license renewal applications must provide properly-supported allegations of fact that, if true, would establish that grant of the application is *prima facie* inconsistent with section 309(k) of the Communications Act of 1934 (Act).<sup>22</sup> Section 309(k)(1) provides that grant of a renewal application is appropriate if we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations that, taken together, constitute a pattern of abuse.<sup>23</sup> If such a finding cannot be made on the basis of the application and pleadings and grant with conditions is not appropriate under the circumstances, section 309(k) provides that the license renewal application will be designated for a hearing.

CTAP alleges that AMFM is operating station WGCI in violation of law because it broadcasts obscene, indecent, and profane content that promotes violence and drug use. We address these categories below.

**Obscenity.** Section 1464 of title 18 of the United States Code prohibits the broadcast of "obscene" language.<sup>24</sup> The Supreme Court of the United States has held that to be obscene: 1) an average person, applying contemporary community standards, would find that the material, as a whole, appeals to the prurient interest; 2) the material depicts or describes, in a patently offensive way, sexual conduct

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<sup>16</sup> *Id.* at 7-8. We will strike from the record and decline to consider this argument because it was raised for the first time in the Reply. 47 CFR § 1.45(c).

<sup>17</sup> Reply at 8-10.

<sup>18</sup> *Id.* at 10. We will strike from the record and decline to consider this argument because it was raised for the first time in the Reply. 47 CFR § 1.45(c).

<sup>19</sup> See 47 U.S.C. § 309(d)(1) and 47 CFR § 73.3584(a).

<sup>20</sup> See *Tabback Broad. Co.*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900, para. 4 (2000) (*Tabback*), and *Chet-5 Broad., L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041, 13042, para. 4 (1999) (*Chet-5*).

<sup>21</sup> See 47 CFR § 73.3587; *Tabback*, 15 FCC Rcd at 11900, para. 4.

<sup>22</sup> 47 U.S.C. § 309(d)(1). See, e.g., *Cumulus Licensing Corp.*, Order, 16 FCC Rcd 1052, 1054 n.5 (2001) (stating that the Commission follows the same two-step analysis in assessing the merits of a petition to deny or informal objection and noting that the first step of the analysis is to determine whether "the pleading makes specific allegations of fact which, if true, would demonstrate that grant of the applicant would be *prima facie* inconsistent with the public interest"); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1989) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

<sup>23</sup> 47 U.S.C. § 309(k)(1).

<sup>24</sup> 18 U.S.C. § 1464. See also 47 U.S.C. § 503(b)(1)(D).

specifically defined by applicable law; and 3) the material, taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>25</sup>

**Indecency.** The Commission defines indecent speech as language or material that, in context, depicts or describes, in terms patently offensive as measure by contemporary community standards for the broadcast medium, sexual or excretory activities or organs. In determining whether the complained-of material is patently offensive, three factors are particularly relevant: (1) the explicitness or graphic nature of the description or images; (2) whether the material dwells on or repeats at length descriptions or sexual or excretory organs or activities; and (3) whether the material appears to pander or is used to titillate or shock.<sup>26</sup>

**Profanity.** The Commission has defined profanity as “language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.”<sup>27</sup> Due to “the sensitive First Amendment implications in this area,” the Commission limited its regulation of profane language to “the universe of words that are sexual or excretory in nature or are derived from such terms.”<sup>28</sup> However, even that limited definition was invalidated by the Court of Appeals for the Second Circuit.<sup>29</sup> While the Commission has “recognize[d] that additional words, such as language conveying racial or religious epithets, are considered offensive by most Americans,” it made clear its intent “to avoid extending the bounds of profanity to reach such language given constitutional considerations.”<sup>30</sup>

**Drug Use.** While the Commission has reminded broadcasters that they must make “reasonable efforts” to determine the meaning of a song’s lyrics prior to broadcasting content,<sup>31</sup> the Commission specifically clarified that it would not ban the broadcast of “drug-oriented” songs.<sup>32</sup> Further, the Commission has repeatedly maintained that its role in program content is very limited.<sup>33</sup>

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<sup>25</sup> *Miller v. California*, 413 U.S. 15, 24 (1973).

<sup>26</sup> *Mark N. Lipp, Esq.*, Letter Order, 22 FCC Rcd 21429, 21435 (MB 2007).

<sup>27</sup> *Complaints Regarding Various Television Broadcasts Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2669, para. 17 (2006) (2006 Indecency Order), partially vacated and revised, 21 FCC Rcd 13299 n.121 (2006), rev’d, *Fox Television Stations, Inc. v. FCC*, 489 F.3d 444, 461-462 (2d. Cir. 2007), rev’d and remanded, 552 U.S. 502 (2009).

<sup>28</sup> *See id.*

<sup>29</sup> *See id.* The Commission did not further defend its finding that the vulgar language at issue in *Fox* was profane. *See Fox Television Stations v. FCC*, 613 F.3d 317, 327 n.7 (2d Cir. 2010), vacated and remanded, 132 S. Ct. 2307 (2012).

<sup>30</sup> 2006 Indecency Order, 21 FCC Rcd at 2669, para. 18.

<sup>31</sup> *Yale Broad.*, 478 F.2d 594, 598 (D.C. Cir. 1973) (“It is beyond dispute that the Commission requires stations to broadcast in the public interest. In order for a broadcaster to determine whether it is acting in the public interest, knowledge of its own programming is required.”).

<sup>32</sup> *Licensee Responsibility to Review Records Before Their Broadcast*, Memorandum Opinion and Order, 31 FCC 2d 377, 378-79, paras. 4-6 (1971).

<sup>33</sup> *See, e.g., AMFM Radio Licenses, L.L.C.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 10751, 10752, para. 4 (2004); *Clear Channel Broad. Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 1768, 1777, para. 16 (2004); *Saga Commc’n of New England, LLC*, Letter, 23 FCC Rcd 11008, 11010 (2008); *Infinity Media Corp.*, Letter, 23 FCC Rcd 1820, 1821 (2008); *The Greenwich Broad. Corp.*, Letter Order, 23 FCC Rcd 1692, 1693 (MB 2008).

Promotion of Violence. The Commission may take enforcement action based on broadcast speech that “is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”<sup>34</sup> The Commission declines to do so, however, unless a local court of competent jurisdiction has determined that the speech at issue meets the *Brandenburg* test.<sup>35</sup>

We reject CTAP’s arguments in accordance with the First Amendment and section 326 of the Act, which prohibit the Commission from censoring program material or interfering with broadcasters’ free speech rights. The Commission has held that it will not take “adverse action on a license renewal application based only upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.”<sup>36</sup> The Commission has also recognized that: “Licensees have broad discretion – based on their right to free speech – to choose, in good faith, the programming they believe serves the needs and interests of their communities. This holds true even if the material broadcast is insulting to a particular minority or ethnic group in a station’s community.”<sup>37</sup> Finally, the Commission has held that “if there is to be free speech, it must be free for speech that we abhor and hate as well as for speech that we find tolerable and congenial.”<sup>38</sup> Accordingly, the Commission will intervene in programming matters only when a licensee is found to have abused its discretion.<sup>39</sup>

Under the Commission’s established analyses discussed above, the language quoted in CTAP’s pleadings is not obscene, indecent, or profane. CTAP’s pleadings rely on discreet portions and brief lyric fragments of larger songs. CTAP’s allegations are conclusory and based on its interpretation that the lyrics allegedly aired on WGCI hint at potentially vulgar or indecent content. However, the Commission has held that language using sexual double entendres and fleeting references or innuendo

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<sup>34</sup> See *Citicasters Licenses, L.P.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 19324, 19331-32, para. 20 (MB 2007), citing *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

<sup>35</sup> See *Spanish Radio Network*, Memorandum Opinion and Order, 10 FCC Rcd 9954, 9959, paras. 21-22 (1995) (noting that “any determination that particular speech poses a ‘clear and present danger of serious substantive evil’ presupposes a familiarity with the circumstances, issues, and concerns of the community where such speech was heard, a familiarity which the Commission, in most cases, does not have and cannot practically obtain” and explaining that “[l]ocal authorities responsible for keeping the peace and enforcing the law are better positioned to know and assess the specific and unique circumstances in the . . . community and, thus, to determine whether the *Brandenburg* test has been met”).

<sup>36</sup> See *Citadel Broad. Co.*, Memorandum Opinion and Order and Notice of Apparent Liability, 22 FCC Rcd 7083, 7101, para. 41 (2007), citing *WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251, para. 4 (1978).

<sup>37</sup> *Multicultural Radio Broad. Licensee, LLC*, Letter, 22 FCC Rcd 21429, 21434 (MB 2007), citing *License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania*, Memorandum Opinion and Order 8 FCC Rcd 6400, 6401, para. 7 (1993), and *Zapis Commc’ns Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3888, 3889, para. 7 (MB 1992).

<sup>38</sup> *Anti-Defamation League of B’nai B’rith*, Memorandum Opinion, 4 FCC 2d 190, 192 (1966), aff’d, Memorandum Opinion and Order, 6 FCC 2d 385 (1967), aff’d sub nom. *Anti-Defamation League of B’nai B’rith v. FCC*, 403 F.2d 169 (1968), cert. denied, 394 U.S. 930 (1969).

<sup>39</sup> *Philadelphia Station License Renewals*, 8 FCC Rcd at 6401 (abuse of discretion occurs if a licensee is unreasonable or discriminatory in its selection of issues that it believes are of concern to the local community or if it offers such nominal levels of issue-responsive programming as to have effectively defaulted on its obligation).

alluding to sexual organs or activities are not patently offensive.<sup>40</sup> Moreover, AMFM maintains, and CTAP does not dispute, that if song lyrics contain expletives or potentially problematic language, radio-edited versions with altered or deleted lyrics are played instead.<sup>41</sup> Lastly, CTAP has not presented any evidence that a court has found that the lyrics in question incite violence under the *Brandenburg* test.

For the reasons described above and consistent with the First Amendment, section 326 of the Act, and the Commission's repeated statements that its "role in overseeing program content is very limited,"<sup>42</sup> we find that grant of the Application is appropriate.

**Conclusion.** We have evaluated the Application pursuant to section 309(k) of the Act, and we find that WGCI has served the public interest, convenience, and necessity during the most recent license term. Moreover, we find that there have been no serious violations of the Act or the Rules involving WGCI, or any other violations that, taken together, would constitute a pattern of abuse. Therefore, we deny the Objection and grant the Application.

Accordingly, IT IS ORDERED that the pleading, Pleading File No. 0000120299, filed by the Clear the Airwaves Project, treated as an informal objection against the WGCI(FM), Chicago, Illinois license renewal application, Application File No. 0000118922, IS DENIED.

IT IS FURTHER ORDERED that the license renewal application of AMFM Broadcasting Licenses, LLC for station WGCI(FM), Chicago, Illinois, Application File No. 0000118922 IS GRANTED.

Sincerely,

Albert Shuldiner  
Chief, Audio Division  
Media Bureau

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<sup>40</sup> See, e.g., *Complaints Regarding Various Television Broad. Between February 2, 2002 and March 8, 2005*, Notices of Apparent Liability and Memorandum Opinion and Order, 21 FCC Rcd 2664, 2713 (2006), *vacated in part*, 21 FCC Rcd 13299 (2006) (holding that a sexual double entendre made through an animated lion character's statement, "Big Daddy's ready for lovin' ... it may be nine o'clock in New York, but right here it's mountin' time," was not indecent). See also *Complaints by Parents Television Council Against Various Broad. Licensees*, Memorandum Opinion and Order, 20 FCC Rcd 1931 (2005), and Memorandum Opinion and Order, 20 FCC Rcd 1920 (2005) (references or innuendo alluding to sexual organs or activities held not to be patently offensive where they were not sufficiently graphic or explicit and were not repeated or dwelled upon).

<sup>41</sup> CTAP admits that WGCI does not air profanities and written lyric samples in CTAP's pleadings also reflect censored expletives. Reply at 7; Objection at 2-3.

<sup>42</sup> See, e.g., *AMFM Radio Licenses, L.L.C.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 10751, 10752, para. 4 (2004); *Clear Channel Broad. Licenses, Inc.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 1768, 1777, para. 16 (2004); *Saga Commc'n of New England, LLC*, Letter Order, 23 FCC Rcd 11008, 11010 (2008); *Infinity Media Corp.*, Letter Order, 23 FCC Rcd 1820, 1821 (2008); *The Greenwich Broad. Corp.*, Letter Order, 23 FCC Rcd 1692, 1693 (2008).